Filed 9/10/03 In re Susan P. CA2/7

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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| In re SUSAN P., a Person Coming Under the Juvenile Court Law. | B160345<br>(Los Angeles County<br>Super. Ct. No. KJ19545) |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>SUSAN P.,<br><br>Defendant and Appellant. | |

APPEAL from a judgment of the Los Angeles County Superior Court. Daniel S. Lopez, Judge. Affirmed.

Cynthia L. Barnes, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Mark E. Turchin and Marc J. Nolan, Supervising Deputy Attorneys General, for Plaintiff and Respondent.

Appellant, Susan P., appeals from the judgment committing her to the California Youth Authority (CYA) for a maximum period of confinement totaling six years and four months. (Welf. & Inst. Code, § 800.)

**FACTS**

Susan initially came before the Juvenile Court on February 13, 2001, for committing a battery on a school official. She was placed on informal probation for a period of six months under certain conditions. (Welf. & Inst. Code, § 725.) Within those six months, she violated that probation by leaving her educational placement without permission. As a result probation was revoked and a bench warrant was issued for her arrest on June 27, 2001.

Within six weeks, on August 3, 2001, she was once again before the court on a new petition alleging a burglary of the first degree. (Pen. Code, § 459.) She was ordered detained in juvenile hall pending adjudication of the new petition. On August 23, the petition was amended to add a count II alleging a second degree burglary. Following a contested hearing, the petition was sustained as to the first degree burglary only. The matter was continued for disposition, but the court informed Susan it was going to recommend a closed placement named the Dorothy Kirby House.

By the time Susan was brought back to court, on September 24, 2002, she had been charged with two additional misdemeanors; possession of marijuana, a violation of Health and Safety Code section 11377.5, and driving a motor vehicle without a license, a violation of Vehicle Code section 12500. Both of those violations were alleged to have occurred on August 1, 2001. Susan admitted both allegations. She was taken from the custody of her parents and was ordered placed in a closed suitable placement facility. She was also informed by the court, "In the event you violate the conditions at Dorothy Kirby, you may serve the balance of your time at a camp facility, or the California Youth Authority. [¶] Do you understand those possibilities?" Susan answered in the affirmative. Susan was placed at the Dorothy Kirby Center on October 23, 2001.

By February 1, 2002, a little over three months later, Susan was once again in court where it was alleged she had repeatedly misbehaved at the Dorothy Kirby Center. Among other things, it was alleged she had shown disrespect to staff, claimed to be sick when she was not so that she could cut class, refused to leave class when ordered to do so, had failed to attend scheduled group therapy, had been failing to control her anger, was flying into uncontrollable rages and had been placing medications in her bra so that she could "knock out later." After Susan admitted the violations, the court informed her it was going to send her to camp for 14 weeks; and if she successfully completed camp there was a possibility she might be sent back to Dorothy Kirby. The court once again admonished Susan stating, "If Dorothy Kirby doesn't work out, the only option I have for you is the California Youth Authority." She was also told that if she did not straighten up she might go back to camp or she might go to CYA.

A little over three months later, on May 8, 2002, Susan was once again in front of the court on a Welfare and Institutions Code section 777 petition that recommended a CYA commitment. The matter was then continued two times to enable the court to have an updated report and evaluation of Susan. Following a hearing the court found 10 of the 11 charged probation violations to be true and continued the matter for two additional days for disposition.

At the continued hearing, the court recited Susan's history and then stated, "I do note your desire is to be placed at Phoenix House to deal with your drug abuse. You have been diagnosed, dual diagnosed with depression and history of drug dependency. [¶] In terms of the C.Y.A. recommendation I would like to hear from the probation officer. I have a problem sending away a minor who has only three months at Dorothy Kirby and three months in camp and has no history of violent behavior."

When the probation officer was called to the stand he stated Susan had exhausted all of the resources the county had to offer. Susan had not responded well to any of the treatment offered and CYA had many more resources to deal with individuals with Susan's problems. A return to Dorothy Kirby was not a viable option because Susan had already failed the program. Additionally, there was a long waiting list for Dorothy Kirby

and it was the probation officer's opinion there were others more deserving than Susan who should be given the opportunity to go to Dorothy Kirby. Also, he indicated, Susan did have a history of violence. She had admitted to participating in a drive-by and, in the same week as the hearing, she had tried to hit another minor in the head with a ball. One of the problems with Susan was she was disruptive and this made it more difficult for other minors in the same room to receive proper treatment.

On the other hand, CYA tried to develop employability skills before the ward could leave the institution. CYA had what is called a "no-diploma no-parole" program. This would benefit Susan because it would give her an incentive to do better. Also CYA had 22 drug and alcohol programs which was many more than those available in the county.

Susan took the stand in her own behalf and testified she had taken and passed the G.E.D. and was intending to go to college. She also indicated a desire to return to Dorothy Kirby.

At the conclusion of the hearing the court stated it felt Susan was bright, intelligent and challenging. However, the court also indicated it felt Susan was manipulative. Even though the court wanted to believe Susan was sincere about going back to Dorothy Kirby and trying to do well, based upon everything it had heard and read, it could not. The court then committed Susan to the care and custody of CYA with a maximum term of six years and four months with credits of 348 days.

**In Committing Susan to CYA the Court**
**Did Not Abuse its Discretion**

The only issue raised by Susan is that the court abused its discretion in committing her to CYA. Counsel states, "this 16-year-old adolescent, a former dependent minor with a history of sexual abuse, physical abuse, and drug use, was committed to the youth authority because she was rude, defiant and talked back to her teachers." This, counsel argues, was an abuse of discretion. (*In re Aline D.* (1975) 14 Cal.3d 557.)

However, "A decision by the juvenile court to commit a minor to the CYA will not be deemed to constitute an abuse of discretion where the evidence 'demonstrate[s]

probable benefit to the minor from commitment to the CYA and that less restrictive alternatives would be ineffective or inappropriate.' (Citations) This standard was satisfied here." (*In re Pedro M.* (2000) 81 Cal.App.4th 550, 555-556.) Susan's behavior at the two facilities was, at best, horrible. She cussed out staff and other students, refused to follow directions, refused to attend class and, when in class, sometimes refused to leave when ordered to do so. She attempted to secrete medicines so that she could "knock herself out later" and, in spite of her innocent explanation about the ball incident she was beginning to slip into violent behavior. In violation of camp rules which required hair to be worn in a bun to avoid any appearance of gang affiliation, she wore her hair down. At one point Susan said, "What do you have to do to get kicked out around here?" Things got so bad that other students complained about Susan's actions. In short, she was -- and is -- a disruptive force, to the extent that not only did she not get any benefits from the programs in which she was involved, she also prevented others from doing so.

The trial court found Susan's mental and physical condition and her qualifications were such as to render it probable she would benefit from the reformatory, educational, discipline and treatment services available at the California Youth Authority for girls in Ventura county. In reviewing Susan's contention, we indulge in all reasonable inferences in support of the judgment. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) The fact that the court expressed concern and worry over the hole Susan was digging for herself does not mean the court abused its discretion. Rather, it reveals the court was concerned and was trying to do the best it could for a person who would not help herself. (Compare *In re Gerardo B.* (1989) 207 Cal.App.3d 1252, 1258.)

Here, the court determined Susan needed a structured environment and that CYA provided the programs she needed. Having made that determination based upon substantial evidence, we find no error. (*In re George M.* (1993) 14 Cal.App.4th 376, 379.)

DISPOSITION

The judgment is affirmed.

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MUÑOZ (AURELIO), J.*

We concur:

JOHNSON, Acting P. J.

WOODS, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.